



AF  
3700

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Roger M. Snow                      Examiner: W. M. Pierce  
Serial No. 09/740,216                      Group Art Unit: 3711  
Filed: December 18, 2000                      Docket No. PA0513.ap.US  
Title: METHOD OF PLAYING A THREE PART WAGERING GAME

**BOX: AF APPEALS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

**RECEIVED**  
MAR 10 2003  
TECHNOLOGY CENTER R3700

**The following documents are hereby submitted:**

- ☒ Appeal Brief to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office (three copies) 27 Pages
- ☒ Authorization to withdraw \$320.00 to cover Appeal Brief Fee.
- ☒ Transmittal Sheet
- ☒ Return postcard

**Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers if an additional extension of time is deemed necessary by the Office. Authorization is hereby given to charge Deposit Account Number 50-1391 if such additional extension is necessary.**

MARK A. LITMAN & ASSOCIATES, P.A.  
York Business Center, Suite 205, 3209 W. 76<sup>th</sup> St.  
Edina, MN 55435 (952-832-9090)

By: Mark A. Litman  
Atty: Mark A. Litman  
Reg. No. 26,390

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Assistant Commissioner for Patents, Box AF Appeals, Washington, D.C. 20231 on 3 March 2003

Mark A. Litman  
Name

Mark A. Litman  
Signature



1/3  
#16  
Appeal Brief  
S. Zimmerman

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Roger M. Snow                      Examiner: W. M. Pierce  
Serial No. 09/740,216                      Group Art Unit: 3711  
Filed: December 18, 2000                      Docket No. PA0513.ap.US  
Title: METHOD OF PLAYING A THREE PART WAGERING GAME

APPEAL BRIEF TO THE BOARD OF  
PATENT APPEALS AND INTERFERENCES OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

**BOX AF (Appeals)**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

RECEIVED  
MAR 10 2003  
TECHNOLOGY CENTER R3700

Sir:

This is an appeal from the Office Action mailed on September 18, 2002 finally rejecting claims 1-11 and 21-27, the only claims being examined in the Application. All other claims are withdrawn/cancelled as drawn to a non-elected invention.

This Brief is being filed in triplicate along with authorization to debit \$310.00 to Deposit Account No. 50-1391 to cover the fee for the appeal. Appellants request the opportunity for a personal appearance before the Board of Appeals to argue the issues of this appeal. The fee for the personal appearance will be timely paid upon receipt of the Examiner's Answer.

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on 3 March 2003.

Mark A. Litman  
Name

Signature

## TABLE OF CONTENTS

### Page No.

Real Party in Interest.....	3
Status of Claims.....	4
Status of Amendments.....	5
Summary of the Invention.....	6-7
Issues.....	8
Related Appeals and Interferences .....	9
Grouping of Claims.....	10-11
Response to the Rejection. ....	12-22
Conclusion.....	23
Appendix.....	24-27

**REAL PARTY IN INTEREST**

The real party in interest is the assignee of this Application, Shuffle Master Gaming, Inc. a corporation formed under the laws of the State of Nevada and having a principle place of business at 1109 Palms Airport Drive, Las Vegas, Nevada 89119-3730.

**STATUS OF CLAIMS**

Claims 1-11 and 21-27, all of the claims under examination have been rejected on a single ground of rejection. All claims under examination have been rejected under 35 USC 103(a) as unpatentable over Awada ('643) in view of Awada ('550).

### **STATUS OF AMENDMENTS**

No Amendments were submitted after the final rejection in the Office Action of September 18, 2003. All amendments submitted before the final rejection have been accepted by the U.S. Patent and Trademark Office without objection and have been entered.

## SUMMARY OF THE INVENTION

Casino table card wagering games comprising combinations of different cards games played in sequence are known in the art. Among those games is the "Multi—Action" or "3 WAY ACTION®" card game described in U.S. Patent No. 5,988,643 (Awada '643). This Multi-Action game comprised the games of High Card (a single card competition of Player vs. Dealer), a Blackjack wager (played after conclusion of the High Card game, using normal Blackjack rules (with the exception that neither the Dealer nor the Player may receive more than seven cards and that the player may not double or split hands). After conclusion of play and resolution of awards in Blackjack, the Player and then the Dealer will be dealt whatever number are cards are needed in each hand to provide seven cards in each Player's hand and the Dealer's hand. The Player and the Dealer then form the best five-card poker hands from their respective seven cards and the higher hand wins the separate bet placed on the poker game. (Page 1, lines 9-11 and Page 2, line 23 through page 4, line 5)

A number of problems have existed in the play of the game that have prevented its acceptance in casinos. The dealer often may deal too many cards ((Page 4, lines 6-14), and Appellants determined that the game is too slow because the dealer must both deal cards to himself after all cards are dealt to the Players, and then the dealer must set (arrange) his own hand to the highest rank of five of the seven cards). (Page 5, line 19 through page 6, line 8).

Each Player hand must also be compared directly with the Dealer's hand. This adds additional time to play. (Page 6, lines 21-28)

The presently described invention overcomes the most serious problem of time delay and removes some of the problem in dealing excess cards by ~~avoiding having to~~ deal cards to the Dealer and by limiting the Players' hand to a maximum of six cards (in original claims 1-11) (SEE page 7, line 13 through page 8, line 7; Page 8, lines 3-28; and Page 11, lines 22-27). The Players' hands are paid directly against a pay table. In this

in Awada?

manner, the player may get multiple-value awards (that is, awards multiply the poker wager rather than paying only one-to-one). (Page 14, lines 1-20).

The game offers more control over percentage hold by the house and allows for variations in payouts, which were restricted to 1:1 (except in Blackjack) in the 3 WAY ACTION® game. (Page 14, lines 16-20 and Page 13, lines 5-11)



## ISSUES ON APPEAL

The generic issue in this Appeal is whether the subject matter of the claims on Appeal is obvious to one of ordinary skill in the gaming art under 35 U.S.C. 103(a) over Awada ('643) in view of Awada ('550).

The specific issues in this Appeal include at least:

- 1) Is it obvious under 35 U.S.C. 103(a) to modify the game of Awada ('643) in view of Awada ('550) by specifically limiting the number of cards dealt to a Player to six cards while eliminating all additional cards to the Dealer after play of Blackjack?
- 2) Is it obvious to eliminate Player versus Dealer play in a five card poker concluding game in the game of Awada ('643) in view of Awada ('550), with no prior art recognition of the problems in the play of the Awada game of U.S. 5,988,643?
- 3) Without recognition of the problems in the play of the Awada game described in U.S. Patent No. 5,988,643, was it obvious to both speed up play, reduce the likelihood of misdealt hands, and increase the potential for larger payouts for the Player, without eliminating the necessary house percentage, by altering the last poker game to a pay table award game?
- 4) Are limitations of novel elements of play recited in dependent claims obvious over Awada ('643) in view of Awada ('550)?

### **RELATED APPEALS AND INTERFERENCES**

Appellants do not know of any other pending U.S. Patent Applications that are on appeal which have issues that overlap with the issues in this Appeal. No Interference proceedings before the U.S. Patent and Trademark Office are known by Appellants to have any substantive relationship to the subject matter of this Appeal.

### **GROUPING OF CLAIMS**

The following grouping of claims is made in compliance with the requirements of 37 C.F.R. 1.191 for the content of an Appeal Brief. The following grouping of claims is made to expedite this Appeal and narrow issues, and is not intended to waive or limit the right of the Applicants to enforce and defend claims separately, even though they are grouped for convenience in this Appeal.

- a) Claims 1-5 and 10 shall stand or fall with the patentability of claim 1 under 35 USC 103(a) with respect to the issue of obviousness over Awada ('643) in view of Awada ('550).
- b) Claim 6 and 8 shall stand or fall with the patentability of claim 6 under 35 USC 103(a) with respect to the issue of obviousness over Awada ('643) in view of Awada ('550). Claim 6 recites rules of play wherein the Player automatically wins if the Player receives six cards without breaking and the Dealer does not have a natural (Blackjack) and allows the Player to split Aces in Blackjack.
- c) Claim 7 shall stand or fall by itself with respect to the issue of obviousness over Awada ('643) in view of Awada ('550). This claim allows the Player to retain one-half the original wager in the first game if the Player's first card is the same value as the Dealer's first card.
- d) Claim 9 shall stand or fall by itself with respect to the issue of obviousness over Awada ('643) in view of Awada ('550). These claims relate to specific pay tables that have been provided with respect to the play of the poker game selecting the best five cards from a six card hand.

e) Claim 11 shall stand or fall by itself with respect to the issue obviousness over Awada ('643) in view of Awada ('550). This claim recites a rule where a player may not touch cards on the table during play of the games.

f) Claims 21, 22, 24 and 26 shall stand or fall with the patentability of claim 21. Claim 21 defines a separate independent claim from claim 1 and describes allowing a broader range of steps than that allowed in claim 1, specifically with respect to the number of cards that the player may receive in the poker-type game.

g) Claims 23 and 27 shall stand or fall with the patentability of claim 23 with respect to the issue obviousness over Awada ('643) in view of Awada ('550). These claims allow a maximum of six cards in the play of Blackjack.

h) Claim 25 shall stand or fall by itself with respect to the issue obviousness over Awada ('643) in view of Awada ('550). This claim recites that a maximum of six cards be provided with the play of the poker game.

## ARGUMENTS OF APPELLANT

### a) Claims 1-5 and 10 shall stand or fall with the patentability of claim 1 under 35 USC 103(a) with respect to the issue of obviousness over Awada ('643) in view of Awada ('550).

The single ground of rejection in this Application, the rejection of claims 1-11 and 21-27 under 35 USC 103(a) essentially asserts that the only difference between Awada '643 IN VIEW OF Awada ('550) and the claimed invention is that in the resolution of the final poker hand. Awada '643 pays for Player hands winning against the dealer's hand, while the claimed method pays according to a pay table, without competition against the dealer in that particular game element play. The underlying basis of the rejection is that both game resolution by 1) comparing player and dealer hands and 2) comparing player hands and a pay table are known in the art as evidenced by Awada '550. As they are essentially equivalent game resolution methods, it would be obvious for one of ordinary skill in the art to substitute the pay table of Awada '550 for the player versus dealer resolution of Awada. This rejection is in error for a number of reasons that have not been addressed in the rejections of record, including the failure of the rejections to address specific limitations that are not taught in the combination of references.

New  
The value of the Awada '550 reference in this rejection has been misplaced for a number of reasons. The critical difference in the present game is not merely the fact that a pay table is used in a casino table card game, but rather that play of a casino table card game switches from a player-versus-dealer game to a player-versus-paytable game at a critical junction in the play of a sequenced game. Awada '550, in spite of the fact that it is offered in the rejection-as:

".... '550 teaches in a "three segments game play" (pg. 5, line 13 or remarks) to compare the player's cards to a final pay table..."

Why does  
the '550  
rejection  
say this?  
Because  
of the  
fact that  
the game played by Awada '550 comprises three consecutive games played against a payable. There is never a dealer's hand, there is never a shift in play from a player-versus-dealer game to a player-versus-paytable game at any time, or visa-versa. Awada '550 therefore teaches little more than what Applicant admitted to be old (that casino table card games with a payable existed) and may add that consecutive games with paytables are known. The critical step of switching from a player-versus-dealer game to a player-versus-paytable game was not known in the art. That is a crucial element of the present invention and allows a greater variety of games

with greater player interest to be played. This can be seen by an analysis of the games, hold and payouts in the Awada '550 game, which is limited by its requirement of only payable pay.

The first game that must be played by Awada '550 in a one-card payable game is a one-to-one bet that the player's card will equal or exceed a value of 9. This provides a one-to-one wager with odds of 7:6 against the player (seven cards are less than 9 and six cards [9, 10, J, Q, K and Ace], which means that the house will always win 1/13 hands or 7.69%. That is a very bad wager for a player, yet the game cannot be varied without shifting the same odds to the house (e.g., a value of 8 would win for a player). The game is extremely limited in the play of the first game and all subsequent games because of the use of only player cards. This is less than the potential play for a player where the play may approach 50:50 where a tie in values between the player and the dealer is a push. This provides a very good and even start in the play of the sequence game of the claims.

Additionally, the nature of the play of the games are limited by Awada '550 to parallel games, where a weak hand in the first two games tends to carry through to a weak hand in the final game. A two card hand with no pairs is less likely to improve to a bonus hand in a five-card hand. The play in '550 is less able to overcome this hurdle because the games remain as high poker game values against a payable. This is in contrast with play in the recited game of Applicant where the second game may be blackjack or baccarat, where a quality poker hand may be insignificant to the value of the second game play or even adverse to play of the second game. For example, a 4 and 5 would be valueless in poker but a quality hand in baccarat. A 3 and 8 would be valueless in poker but would be an excellent double-down hand in blackjack. The very ability to shift between a player-versus-dealer game to a player-versus-paytable game offers significant benefits, options and marketability to the sequenced game recited in the present claims.

Is it obvious under 35 U.S.C. 103(a) to modify the game of Awada ('643) in view of Awada ('550) by specifically limiting the number of cards dealt to a Player to six cards while eliminating all additional cards to the Dealer after play of Blackjack?

In addition to the failure noted above, the combination of the two Awada references fails to show the limitation of dealing six cards to a player and selecting the best five of those six cards. This is a significant limitation that is absent. There is no suggestion of such a limitation by the combination of the two Awada references, and no indication of how a payable would be affected by selected five of the best six cards to play against a pay table. The rejection completely fails to address this point. As neither Awada reference teaches this game, the rejection must fail for at least this issue.

It must be noted that this is a highly significant issue. Casino table games must be able to survive a critical test of potential hold for the house versus player potential to win. A significant variation as between allowing players to have only five cards 9as in the third consecutive pay table game of Awada '550) versus a player having the ability to select the best five of six cards is a significant variation that must be addressed by mathematical treatment of the pay tables. There is no teaching of this difference in play by either Awada reference and the rejection cannot be supported with respect to asserting obviousness of claim 1 from the teachings of the references that are totally silent on this limitation.

Is it obvious to eliminate Player versus Dealer play in a five card poker concluding game in the game of Awada ('643) in view of Awada ('550), with no prior art recognition of the problems in the play of the Awada game of U.S. 5,988,643?

There is no motivation on the record for changing the game of Awada '643 by adding a distinctly different game to the play of the '643 game. It is to be noted that the combination of play of Awada '643 and Awada '550 does not even allow a direct substitution of the third consecutive pay table game of Awada '550 into the non-paytable game of Awada '643. The third payable game of Awada '550 is played by the player receiving five and only five cards, and the play of the Awada '643 game requires that the player be allowed up to seven cards. To

combine the games, both of these underlying rules of each game must be changed. These are significant and numerous alterations in each game that must be changed to combine them. There is no motivation to make those specific changes and the rejection. It has been consistently held by the courts that it would not be obvious to selectively choose from among the collective teachings of references to arrive at the claimed invention. (e.g., *Ex Parte Clapp*, US PTO Bd of App. And Pat. Int. 1985, 227 U.S.P.Q 972) and that there must be some objective teaching in the art suggesting that the combination proposed in the rejection be made (e.g., *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, Fed. Cir. 1984, 221 U.S.P.Q. 933; and *In re Fritch*, Fed. Cir. 1992, 23 USPQ2d 1780).

Here, the combined collective teachings of the references fail to teach the step of dealing only six cards and then selecting the best poker hand of five cards from those six cards, and then playing against a pay table. As that concept is totally absent from the teachings of the reference, the rejection must fail as a matter of course.

Without recognition of the problems in the play of the Awada game described in U.S. Patent No. 5,988,643, was it obvious to both speed up play, reduce the likelihood of misdealt hands, and increase the potential for larger payouts for the Player, without eliminating the necessary house percentage, by altering the last poker game to a pay table award game?

It must be further recollected that all of the claims are directed towards a three segment game play with the first two games being played against a dealer and the third game played against a payable. Each of the steps and difference in steps must be considered within the context of the three game progression with a transition in the mode of win evaluation. Given this background, it should be noted that structural differences between player versus dealer resolution and pay table resolution include at least:



- a) Eliminating the step of counting dealer cards and adding additional cards, as necessary, to make a six card final poker hand for the dealer, speeding up the game;
- b) pay table awards to players that are potentially significantly higher than awards based on dealer versus player wins, adding more excitement to the game; and
- c) faster resolution of poker payouts because all comparisons are standard in the confines of poker hierarchy, as opposed to having to compare individual hands to dealer hands that change with each game played.

These are substantive differences, and these differences are not taught by the cited art as beneficial, but have been assumed to be evident in the analysis in the rejection. However, these differences are neither obviously implemented, nor are the benefits of those changes apparent from the teachings of the references, nor are the effects of those benefits on the acceptability of the games obvious from the teachings of the references.

To begin with, **no art cited in this rejection shows the cessation of dealing to the dealer after competition in at least two games between the player and dealer, and then continued dealing to the players to complete hands in a non-competitive casino table card game.** That in itself is a variation in the manner of play that is not obvious from the teachings of the references. Awada '643 teaches only player-versus-dealer play and Awada '550 teaches only player-versus-paytable play. There is no suggestion in either reference or any reference cited in the rejection that a blend of the two distinct systems could be played or that there would be a benefit of such play.

When more than one player is present, the play of Awada '643 requires that the various player and dealer hands be distally and conceptually combined (it would a breach of security to physically combine cards of the dealer and player, then separate the dealer and player cards so that dealer cards could be combined with the cards of another player). The play in Awada '550

limits play of the games to poker variations and prevents player active involvement which is available in baccarat or blackjack.

There are so many distinctions between the game recited by claim 1 and the combined and several teachings of Awada '643 and Awada '550, that even with the hindsight ability of claim 1 to direct amalgamation of those teachings, the individual elements cannot be found to reconstruct the claim.

The rejection of claim 1 is clearly in error and must be withdrawn. Claims 1-5 and 10 should be allowed. As claims 6-9 and 11 are also dependent from claim 1, those claims, even though argued separately, should also be allowed and their rejections reversed.

**b) Claim 6 and 8 shall stand or fall with the patentability of claim 6 under 35 USC 103(a) with respect to the issue of obviousness over Awada ('643) in view of Awada ('550). Claim 6 recites rules of play wherein the Player automatically wins if the Player receives six cards without breaking and the Dealer does.**

This limitation is specific to a rule of play in the game of Blackjack (Twenty-One) that is not taught by either reference. As the play of Awada '643 allows up to seven cards in Blackjack and as Awada '550 does not play Blackjack, there is no possible teaching of this limitation within the references. The rejection must fail because of the absence of this teaching.

**c) Claim 7 shall stand or fall by itself with respect to the issue of obviousness over Awada ('643) in view of Awada ('550). This claim allows the Player to retain one-half the original wager in the first game if the Player's first card is the same value as the Dealer's first card.**

Awada '643 specifically teaches that the house collects the full wager when the Player's first card is the same rank as the Dealer's first card. This difference is not insubstantial. This single change in rules will affect play of the first game approximately 1/13 times (7.692%). This means that the house hold will be affected by 50% 1/13 times in the first game by the imposition of this single rule. Such a significant change in the mathematics of the game would not be made without considered judgment and, conversely, without specific teaching of the suitability of that

rule in combination with the total play of the three games. This limitation is clearly unobvious over the teachings of Awada '643 in view of Awada '550. The rejection should be reversed and the claim allowed.

**d) Claim 9 shall stand or fall by itself with respect to the issue obviousness over Awada ('643) in view of Awada ('550). These claims relate to specific pay tables that have been provided with respect to the play of the poker game selecting the best five cards from a six card hand.**

The specificity of a pay table cannot be understated. Each pay table must be designed for specific games to provide for the critical balance between House hold and Players' rewards. These tables define a range of values for winnings that establish a balance of these considerations. These tables are unique, not only for the combined three-part game of the invention, but also for the play of best five out of six poker game played. There is no basis in the pay tables of Awada '550 for determining these specific ranges in tables. This claim clearly defines independently non-obvious subject matter that is not taught by the combination of references.

**e) Claim 11 shall stand or fall by itself with respect to the issue obviousness over Awada ('643) in view of Awada ('550). This claim recites a rule where a player may not touch cards on the table during play of the games.**

There is no teaching of this rule in the play of Awada '643 or Awada '550 that would suggest this rule. This rule assists in reducing the misdeals in play. As the touching of cards in question by a player will usually automatically result in a misdeal for all players at a table, the imposition of this rule can be used to disqualify only a single player, and when understood by the players, will reduce all incidents of disqualification.

**f) Claims 21, 22, 24 and 26 shall stand or fall with the patentability of claim 21. Claim 21 defines a separate independent claim from claim 1 and describes allowing a broader range of steps then that allowed in claim 1, specifically with respect to the number of cards that the player may receive in the poker-type game.**

Although this claim is broader in scope than claim 1, by allowing more than six cards to be dealt to the players, all other arguments of patentability with respect to claim 1 are still applicable.

It must be recollected that all of the claims are directed towards a three segment game play with the first two games being played against a dealer and the third game played against a payable. Each of the steps and difference in steps must be considered within the context of the three game progression with a transition in the mode of win evaluation. Given this background, it should be noted that structural differences between player versus dealer resolution and pay table resolution include at least:

- Eliminating the step of counting dealer cards and adding additional cards, as necessary, to make a six card final poker hand for the dealer, speeding up the game;
- pay table awards to players that are potentially significantly higher than awards based on dealer versus player wins, adding more excitement to the game; and
- faster resolution of poker payouts because all comparisons are standard in the confines of poker hierarchy, as opposed to having to compare individual hands to dealer hands that change with each game played.

These are substantive differences, and these differences are not taught by the cited art as beneficial, but have been assumed to be evident in the analysis in the rejection. However, these differences are neither obviously implemented, nor are the benefits of those changes apparent from the teachings of the references, nor are the effects of those benefits on the acceptability of the games obvious from the teachings of the references.

To begin with, **no art cited in this rejection shows the cessation of dealing to the dealer after competition in at least two games between the player and dealer, and then continued dealing to the players to complete hands in a non-competitive casino table card**

game. That in itself is a variation in the manner of play that is not obvious from the teachings of the references. Awada '643 teaches only player-versus-dealer play and Awada '550 teaches only player-versus-paytable play. There is no suggestion in either reference or any reference cited in the rejection that a blend of the two distinct systems could be played or that there would be a benefit of such play.

When more than one player is present, the play of Awada '643 requires that the various player and dealer hands be distally and conceptually combined (it would a breach of security to physically combine cards of the dealer and player, then separate the dealer and player cards so that dealer cards could be combined with the cards of another player). The play in Awada '550 limits play of the games to poker variations and prevents player active involvement which is available in baccarat or blackjack.

There are so many distinctions between the game recited by claim 21 and the combined and several teachings of Awada '643 and Awada '550, that even with the hindsight ability of claim 21 to direct amalgamation of those teachings, the individual elements cannot be found to reconstruct the claim.

The rejection of claim 21 is clearly in error and must be withdrawn. Claims 21, 22, 24 and 26 should be allowed. As claims 6-9 and 11 are also dependent from claim 1, those claims, even though argued separately, should also be allowed and their rejections reversed.

g) Claims 23 and 27 shall stand or fall with the patentability of claim 23 with respect to the issue obviousness over Awada ('643) in view of Awada ('550). These claims allow a maximum of six cards in the play of Blackjack.

These claims provide again for the use of a maximum number of six cards in the play of Blackjack. Awada specifically allows for a maximum of seven. There is no reason for this change, as it alters some normal rules of play of Blackjack. Additionally, this rule is material only where a six card hand of poker is to be played and has no other material relevance. This limitation is unobvious from the teachings of Awada '643 in view of Awada '550.

**h) Claim 25 shall stand or fall by itself with respect to the issue obviousness over Awada ('643) in view of Awada ('550). This claim recites that a maximum of six cards be provided with the play of the poker game.** This claim further benefits from all of the arguments made above with respect to claim 1. This rejection is clearly in error, the rejection must be reversed and this claim must be allowed.

**CONSIDERATION OF THE DECLARATION OF ROGER SNOW**

The Office Action has attempted to diminish the value of the Snow Declaration. That declaration was submitted to support the evidence of the impact of the changes on the value and quality of play of the game represented by the claims in comparison to the game described by Awada. The Declaration of Roger M. Snow under 37 C.F.R. 1.132 accompanies the previous Amendment and Response. That Declaration does in fact provide evidence of the effect of the specific structural changes described above on the impact of the game with players and casinos with regard to acceptability and play efficiency and house retention on the play of the game, and indicates that the relative commercial success was due at least in part to the difference in play that represents the difference in the games claimed in this Application and taught in Awada '643.

Because of the cessation of dealing to the dealer while continuing dealing to the player (not suggested in the prior art in the rejection) and the use of pay tables versus dealer versus player resolution, there was about a 40% increase in rate of play in the game. This is a significant benefit to both the player and the house. With greater play frequency, the house has more games per hour and has the ability to retain more money/time. Because the house has the ability to retain more money/time, it is able to have more flexibility in defining the payout tables, so that higher bonuses can be paid to players while still maintain desired levels of return on the tables to the house (casino). These benefits are not shown or even suggested in the art, and the benefits from the alteration in play from the game illustrated by the Awada Patent and the presently claimed invention were not obvious from the teachings of the references.

**In direct comparison between the game designed and marketed by Awada** (and represented by the claims of Awada '643) and the game represented by claims 1-11 and 21-27, the Declaration of Roger M. Snow states that because of the change in play from player versus dealer resolution to game table resolution of players' hands, casinos preferred the game of the present application and requested replacement of the Awada-type games with the games of the present invention. This requested exchange was based upon casino manager perceptions of the quality of the games and not according to any marketing efforts according to the Declaration of Roger M. Snow (e.g., see paragraph 14).

This declaration is not essential to the showing of patentability, but assuming that it is found that a *prima facie* case of obviousness has been established for any claims in this Appeal, this is evidence that would then assist in rebutting that finding.

**CONCLUSION**

All rejections of record have been shown in detail to be in error. The rejection should be reversed and all claims should be indicated as allowable.

Applicants believe the claims are in condition for allowance and request reconsideration of the application and allowance of the claims. The Examiner is invited to telephone the below-signed attorney at 952-832-9090 to discuss any questions that may remain with respect to the present application.

It is clear from the differences in the claims of the present invention and the evidence of record that the effects of the structural change in play between the game of Awada '643 in view of Awada '550 and the game recited in claims 1-11 and 21-27 are not obvious, and even if there is a perception that *prima facie* obviousness had been established, the Declaration of Roger M. Snow rebuts that finding, establishing unexpected results over the game of Awada.

The rejection is in error and should be reversed. All claims 1-11 and 21-27 should be allowed.

A fee calculation sheet is enclosed. .

Respectfully submitted,

ON BEHALF OF ROGER M. SNOW

BY HIS REOPRESENTATIVES

Date: 3 March 2003

By



Mark A. Litman  
Registration No. 26,390  
Attorney for Applicant  
MARK A. LITMAN & ASSOCIATES, P.A.  
York Business Center, Suite 205  
3209 West 76th Street  
Edina, MN 55435  
Telephone: 952.832.9090  
Facsimile: 952.832.9191



**APPENDIX – CLAIMS ON APPEAL**

1. A method of playing a wagering game, comprising:  
Providing one or more decks of standard playing cards;  
A player placing a first wager on a first game segment against a dealer;  
A dealer dealing one card to each player and a same number of cards to the dealer,  
forming player and dealer hands;  
Resolving the first wager by comparing a total point value of the player and dealer hands,  
and awarding a payout to the player if the player hand beats the dealer hand;  
A player placing a second wager on a second game segment;  
A dealer dealing additional cards to each player, a total number of cards held by each  
player and the dealer when combined with the previously dealt cards not to exceed  
six to participate in a second game against the dealer, wherein the second game is  
selected from the group consisting of blackjack and baccarat;  
Resolving the second wager using standard rules of the selected second game;  
A player placing a third wager on a third game segment;  
A dealer dealing only each player additional cards, if any, so that all players hold six  
cards;  
Resolving the third wager by comparing each player's hand to a pay table; and  
Awarding a payout to the players holding predetermined winning hands according to the  
pay table, wherein the third game segment is poker.
2. The method of claim 1, wherein all three wagers are placed prior to the dealer  
dealing any cards.
3. The method of claim 1, wherein all three wagers are mandatory.

4. The method of claim 1, wherein the dealer deals one card to the player and one card to the dealer after the first wager is placed.
5. The method of claim 1, wherein the second game segment is a modified version of 21.
6. The method of claim 5, wherein the modifications are:  
A maximum of six cards are dealt to player;  
If the player receives 6 cards without reaching 21, and the dealer does not have a 2 card natural, the player wins the blackjack hand; and  
Players can split pairs only on Aces.
7. The method of claim 1, and further comprising the step of collecting one-half of the player's wager on the first game segment if the player and dealer tie.
8. The method of claim 1, wherein the third segment is poker.
9. The method of claim 8, wherein the poker hands are resolved according to one of the following pay tables:

Table A

<u>Hand</u>	<u>Payout</u>
Royal Flush	100:1
Straight Flush	50:1
Four of a Kind	25:1
Full House	15:1
Flush	8:1
Straight	5:1
Three of a Kind	3:1
Two Pair	2:1
Pair Aces	1:1

Table B

<u>Hand</u>	<u>Payout</u>
Royal Flush	100:1
Straight Flush	50:1
Four of a Kind	15:1
Full House	10:1
Flush	6:1
Straight	5:1
Three of a Kind	3:1
Two Pair	2:1
Pair Kings or Better	1:1

10. The method of claim 1, wherein a tie in a first game is resolved in favor of the house.
11. The method of claim 1, wherein players are not permitted to touch cards during game play.
21. A method of playing a three segment wagering game comprising the steps of:
  - A player placing three wagers to participate in three sequentially played game segments;
  - A dealer dealing a first card to each player and to the dealer and paying the player when a rank of the player's card exceeds a rank of the dealer's card;
  - A dealer dealing at least one additional card to each player and the dealer, and paying the player when the combined point total of his hand comprising the first card and the at least one additional card exceeds a point total of the dealer's hand without exceeding 21;
  - A dealer dealing additional cards, if necessary, only to each player to provide at least an amount of cards needed to form a poker-type hand, and wherein the player's hand ranking is compared to a predetermined hierarchy of winning poker-type hands and a payout awarded when the player achieves one of the predetermined winning hands.
22. The method of claim 21, wherein each wager is equal.
23. The method of claim 21, wherein a total number of cards dealt in the 21 game does not exceed 6.

24. The method of claim 21, wherein each predetermined winning hand is a five card combination.
25. The method of claim 24 wherein each player received six cards, and the player's five card hand is formed from the best 5 of the six cards.
26. The method of claim 21, wherein the game of 21 is played according to conventional blackjack rules.
27. The method of claim 21 , wherein the 21 game is played according to conventional blackjack rules, except that a maximum of six cards can be dealt to each player and the dealer.